

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ARTHUR J. PAVESE and U.S. POSTAL SERVICE,
POST OFFICE, White Plains, NY

*Docket No. 99-302; Submitted on the Record;
Issued May 9, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant has met his burden of proof to establish that his various medical conditions are caused by factors of his federal employment; and (2) whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

The Board has given careful consideration to the issues involved, the contentions of the parties on appeal and the entire case record. The Board finds that the decision of the hearing representative of the Office dated November 24, 1997 affirming the Office's February 14, 1997 decision, denying appellant's claim on the grounds that appellant failed to establish that his various medical conditions claimed were caused by factors of his employment is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the Office hearing representative.

Subsequent to the hearing representative's November 24, 1997 decision, appellant requested reconsideration in a letter dated April 27, 1998. This was accompanied by a June 28, 1996 medical report. By decision dated July 28, 1998, the Office denied appellant's request for reconsideration without a merit review of the claim.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,¹ the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or a fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.² To be entitled to a merit review of an Office

¹ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application." 5 U.S.C. § 8128(a).

² 20 C.F.R. §§ 10.138(b)(1), 10.138(b)(2).

decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.³ When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.⁴

In support of his reconsideration request, appellant submitted a narrative statement dated April 27, 1998. This narrative statement verbalizes his opinion of the relationship of his medical conditions to factors of federal employment but does not show that the Office erroneously applied or interpreted a point of law. Nor does it advance a point of law or a fact not previously considered. The June 28, 1996 medical report provides a diagnosis of viral syndrome for appellant's complaint of possible food poisoning. Although this evidence is new, it is not relevant to the issue in this case. The Board notes that the denial of this claim is based on the lack of medical evidence attributing any of appellant's claimed conditions to his employment. The June 28, 1996 medical report does not contain a rationalized medical opinion attributing appellant's condition to his employment. Thus, the Office properly found that this evidence was irrelevant to the issue in this case and insufficient to warrant review of the prior decision.

Because appellant did not satisfy any of the criteria of 20 C.F.R. § 10.138(b)(1) requiring a merit review of his claim, the Office properly denied merit review under 20 C.F.R. § 10.138(b)(2).

As the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from known facts.⁵ The Board finds no evidence in the case record of any such abuse of discretion.

Accordingly, appellant did not provide a sufficient evidentiary basis for reopening his claim and the Office properly employed its discretion in refusing to reopen the case for further review on the merits.⁶

³ 20 C.F.R. § 10.138(b)(2).

⁴ *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

⁵ *Daniel J. Perea*, 42 ECAB 214 (1990).

⁶ *Jimmy O. Gilmore*, 37 ECAB 257, 262 (1985).

The decisions of the Office of Workers' Compensation Programs dated July 28, 1998 and November 24, 1997 are affirmed.

Dated, Washington, D.C.
May 9, 2000

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member